IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.528 OF 1991

The State of Maharashtra .....Appellant.

Verus.

Ashok Shripad Savgave .... Respondent.
aged 41 yrs.,Occu-service,
residing at House no.800,
Shaniwar Peth, Satara City,
Pin:415002.

Mr.A.S. Shitol,A.P.P. for the State.

Mr.H.D.Gole for the Respodents.

CORAM: V.M. KANADE,J.

DATE :5th April 2005.

ORAL JUDGEMENT:

1. Appellant i.e. State of Maharashtra is challenging the Judgement and Order passed by the Additional Sessions Judge in Special Case No.2/88. By the said Judgement and Order dated 21st June 1991, Special Judge, Satara was pleased to acquit the accused of the offence punishable under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act,1947 and of the offence punishable under Section 161 of the Indian Penal Code.

2. Brief facts are as under;

Accused was working as senior Clerk in the Court of Civil Judge, Senior Division, Satara in the year 1988 as Darkhast Sirastedar. Original Complainant Vimal Shilwant had filed Miscellaneous Civil Application and had prayed that succession certificate may be granted in her name, as her husband Sampat Tatoba Shilwant had expired in the year 1980. The said application was opposed by one Surekha Adsule on the ground that she was the former wife of the deceased and as such legal heir of the deceased Sampat. In the said proceeding petitioner i.e. original complainant Vimal had filed an application for adjournment for issuing witness summons. However, the said application was rejected on 25.3.88 and the matter was kept for arguments on 6.4.88. Thereafter she had again made a similar application which was again rejected on 6.4.88. Finally the matter was posted for hearing on 14.6.88.

3. It is the case of complainant Vimal that she met accused and expressed her desire to get the matter adjourned on 14.6.88. It is the case of complainant that accused demanded Rs.300/- and told her that if the amount is paid he would get the work done. It is the case of

the prosecution that complainant again visited the court on 10.6.88 and enquired with the accused as to what had transpired about her work and accused again demanded amount of Rs.300/-. But complainant, thereafter stated that the amount was excessive and therefore, accused reduced the said amount to Rs.250/- Complainant told the accused that she would get the amount on 13th June 1988. It is the case of the prosecution that thereafter complainant lodged a complaint with the Anti Corruption Bureau and pre trap panchanama was prepared and all other formalities were completed by the Anti Corruption Bureau. Complainant was told to give pre arranged signal after handing over tainted currency notes to accused. Thereafter the raiding party went in the Court room on 13.6.88. According to the prosecution, complainant handed over tainted currency notes of Rs.250/- which was received by accused in his right hand. Thereafter complainant gave the pre arranged signal and accused was apprehended alognwith the currency notes. Panchanama was prepared. Thereafter sanction to prosecute the accused was obtained from District and Sessions Judge, Satara. Charge-sheet was filed in the court. Charge was framed against accused.Accused pleaded not guilty to the said charge. Trial court after appreciating the evidence brought on record by the prosecution acquitted accused

for offences with which he was charged. Against the said Judgement and Order State has preferred this appeal against accused.

4. I have heard learned APP appearing on behalf of State Shri S.P. Gole on behalf of the accused.

5. Prosecution has examined in all six witnesses in support of its case and also has relied on documentary evidence in the form of pre trap panchnama, post trap panchanma and other documents which have been brought on record by the prosecution. Learned APP on behalf of the State submitted that prosecution has proved the demand made by the accused on 6.2.88 and accepted of the amount of Rs.250/- on 13.6.88 as illegal gratification for the purpose of getting Miscellaneous Application No.39/82 which was fixed for hearing on 14.6.88 adjourned to subsequent date. He submitted that the offer and acceptance has been proved beyond reasonable doubt. He submitted that the trial court, ought to have convicted the accused for offence punishable under Section 5(1)(d) of the Prevention of Corruption Act and under Section 161 of the Indian Penal Code.He further submitted that the trial court had erred in holding that the sanctioning authority had used the draft sanction which was sent

alongwith the letter Ex.39. He submitted that the trial court erred in holding that there was non application of mind on the part of the sanctioning authority and therefore, the entire trial was vitiated.

6. Learned counsel Shri H.D.Gole for respondents, on the other hand strenuously urged that the scope and power of the High Court while exercising its jurisdiction under Section 378 was very limited. He submitted that it was not open for the High Court to arrive at a different conclusion if two views are possible.He submitted that it was not open for the High Court to substitute its own views and convert the order of acquittal into an order of conviction. He submitted that the trial court had given clear and cogent evidence and had rightly held that the prosecution had not proved the case against accused beyond reasonable doubt. He submitted that there was ample evidence on record which clearly suggested that the Sanctioning Authority had not applied its mind while according sanction to prosecute the accused.

7. In the present case admitted facts are that original complainant Vimal had filed Miscellaneous application in the court where the accused was working as Seristedar and had prayed in the said application that

succession certificate be issued to her. It is further admitted position that this application was opposed by one Surekha by intervening in the matter and had claimed to be the first wife of the deceased. Further it is also admitted that various applications were filed by the original complainant Vimal seeking adjournment. However, her application for adjournment was refused on more than one occasion and finally Miscellaneous Civil Application was fixed for argument by the Court on 14.6.88.

8. Prosecution has examined PW 3 Vimal Shilwant. PW 3 has stated in her evidence that accused demanded Rs.300/- from her on 6.6.88 for the purpose of getting the case adjourned from 14.6.88. She has thereafter stated that she again met accused on 10.6.88 and asked him about the progress of the case . Accused again demanded Rs.300/- and after negotiation agreed to accept Rs.250/- for adjourning the matter. She has stated that thereafter she filed the complaint in the Anti Corruption Bureau. Complainant met accused on 13.6.88 and handed over money to him and after pre arranged signal was given by her, raiding party apprehended the accused . In her evidence she has stated that Mr. Vengurlekar was member of the raiding party, who caught the accused by his hand and thereafter further procedure of preparing Panchnama

was completed. Though this witness has mentioned that Inspector Vengurlekar was present at the time when the raid was conducted and that he had apprehended the accused, prosecution has not examined Mr.Vengurlekar to corroborate evidence of complainant. In the first place, there is no evidence apart from bare testimony of complainant that accused had demanded Rs.300/- on 6.6.88. Under these circumstances, it was the duty of the prosecution to examine Mr.Vengurlekar who was incharge of the raiding party and who had apprehended the accused on the spot. This creates doubt in respect of the case of prosecution regarding demand and acceptance of money by the accused. PW 3 original complainant has been cross examined at length. PW 3 has not stated in her evidence that accused had the authority to grant dates on behalf of the court. Further from the evidence of this witness, it is not clear as to what had transpired when money was handed over to accused. She has not stated that accused had demanded money from her and thereafter money was handed over by PW 3 and it was accepted by accused. Thus, from the evidence of this witness, it can not be said that the amount which was accepted was towards illegal gratification. Prosecution thereafter relied on the evidence of PW 5 P.V. Pawar. He has stated in his evidence that complainant Vimal was his client and that

the matter was pending in the Court of Joint Civil Judge, Senior Division and that the matter was kept for hearing on 14.6.88 and that he had asked his client to apply for adjournment as he was not in Satara at the relevant time. It is further stated that on 14.6.88 he came to know what had transpired on 13.6.1988 from his client Vimal. Evidence of this witness does not help the case of the prosecution in any manner as he has clearly stated the facts which had transpired prior to 14.6.88. The prosecution thereafter has examined PW 6 Maruti Dhaphale, the Investigating Officer. He has stated that he was attached to Anti Corruption Bureau office, Satara from 8.2.88. Complaint was filed by complainant on 12.6.88 and trap was arranged and the raiding party went to the court premises on 13.6.88. He has stated that the arrangement which were made by him after the complaint was recorded. He has stated that on the date of incident he and Mr. Vengurlekar caught the right hand of the accused and apprehended accused and currency notes which the accused had thereafter thrown on the floor was collected . There is discrepancy in the statement of PW 6 Maruti and PW 3 Vimalbai. Vimal in her evidence has not stated that PW 6 both had apprehended the accused on the date of incident, whereas PW 6 in his evidence has stated that he alongwith Shri Vengurlekar arrested

accused. This contradiction in the evidence of PW 6 and PW 3 is relevant because, both have given different versions regarding acceptance of amount by accused and his arrest by the members of the raiding party. This contradiction further assumes importance because prosecution has not examined Mr.Vengurlekar in support of its case. In view of this obvious inconsistencies in the statements of PW 3 and PW 6, theory of prosecution of acceptance of amount by accused towards illegal gratification becomes very doubtful as two different versions have been given by these two witnesses regarding the incident of acceptance of illegal gratification. In this context,therefore, adverse inference will have to be drawn for not examining Mr.Vengurlekar who was admittedly member of the raiding party. In view of this clear contradictory statements by the two important prosecution witnesses, in my view, theory of demand and acceptance has not been established by the prosecution beyond reasonable doubt.

9. Prosecution has not examined any witness to prove that accused had the authority to give dates on behalf of court. In fact PW 1 Ingale who was working as Joint Civil Judge, Senior Division, Satara and in whose Court accused was working as Sheristedar has clearly stated

that the only job of the accused was to prepare daily board and to place the matters which were listed on the board before the presiding officer and to maintain and keep record of all the cases, pertaining to execution matters and Miscellaneous applications and to write roznama in those matters. PW 1, therefore, has nowhere stated in his evidence that he had authorised the accused to give adjournments in respect of matters which were on his board. Thus, in absence of any evidence to show that accused has the authority to do illegal act as alleged by the prosecution , it can not be said that accused had authority to grant dates on behalf of the court. Under these circumstances, it can not be said that the amount which was allegedly received by accused was towards illegal gratification. Prosecution also has not examined any witness to state that representation was made by the accused that he was given authority to change the dates except the bare testimony of complainant. This is not possible, therefore, to accept the uncorroborated testimony of complainant that accused had informed her that he would get her work done through Civil Judge, Senior Division.

10. Accused has examined Mukund S. Sarda as his defence witness. Mukund was practicing as an Advocate in

the court at Satara. He has stated in his evidence that on the date of the incident at about 2.45 p.m. he saw one tall person assaulting the accused. he has stated that this person was asking accused to lift the amount of Rs.100/- from the floor. He,therefore, intervened in the matter and asked him not to assault accused.

11. Defence of the accused, therefore, is that inspector had assaulted him and had compelled him to pick up currency notes of Rs.100/- which was lying on the floor.

12. In my view considering the evidence which was brought on record by the prosecution, it is difficult to accept prosecution case and benefit of doubt will have to be given to the accused.

13. Trial court has given clear and cogent reasons after appreciating evidence which has been brought on record and has taken view that prosecution has not proved its case against accused. I do not see any reason to interfere or alter the said findings which are recorded by the trial court.

14. It is the second position in law that the High

Court while appreciating evidence on record in an appeal against acquittal should not substitute its own view to the view taken by the trial court and convert the finding of acquittal into order of conviction unless, it comes to the conclusion that finding recorded by the trial court is either perverse or unreasonable. There is, thus, no substance in the submissions made by learned APP appearing for the State. The appeal is, accordingly, dismissed.

(V.M.KANADE,J)